

DEFICIENCY PROGRESS REPORT – UPDATE 1

February 2, 2009

CUPA: SAN BENITO COUNTY DIVISION OF ENVIRONMENTAL HEALTH

Evaluation Dates: November 4 and 5, 2008

Evaluators: Jennifer Lorenzo, Cal/EPA
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Sean Farrow, SWRCB

Submittal date (Update 1): February 2, 2009

Deficiencies corrected (Update 1): 1, 6, 7 and 8

Status: Deficiencies 2, 3, 4, and 5 remain outstanding.

Next Progress Report (2nd Update) Due: July 27, 2009

- 1. Deficiency:** The CUPA is not assessing the entire state surcharges on some of its regulated facilities.

Corrective Action: By June 30, 2009, the CUPA will assess and collect all appropriate state surcharges on its regulated facilities. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.

CUPA Update 1: Surcharge amounts that were not previously collected have been adjusted and are now being collected. The affected businesses are limited to 10 underground tank facilities that were charged a surcharge for the tanks but not for the hazardous materials business plan.

Insert # 1

A copy of the facility invoice is attached for Gavilan Aviation and Hometown Gas that have submitted their annual updates showing the additional surcharge.

As a note:

The ten underground tank facilities do not store any other hazardous material on site other than what is in the underground tank. The underground tank surcharge has been and continues to be sent up to the State.

The underground tank facilities that store other hazardous materials such as propane etc have been charged the business plan surcharge in addition to the underground tank surcharge. This is easy to see because they have additional business plan requirements but it is not easy to see why the State is requiring the additional surcharge for these ten facilities that do not have the additional requirements.

Cal/EPA Response: *Cal/EPA is pleased with the CUPAs efforts to address the above deficiency, no further update is required.*

2. **Deficiency:** The CUPA is not fully tracking and reporting the enforcement actions taken on the Annual Enforcement Summary Report 4.

Corrective Action: By September 30, 2009, the CUPA will verify that the violations and enforcement data on the Annual Enforcement Summary Report 4 will be complete and as accurate as possible. By February 3, 2009, the CUPA will develop an action plan to remedy the situation and implement it. Beginning February 3, 2009, the CUPA will submit a progress report toward correcting this deficiency.

CUPA Update 1: The CUPA mistakenly did not count letters and /or notices sent to a business prior to submitting a case for legal action to be enforcement. It was thought that enforcement was the introduction of the legal system to resolve a non compliant condition.

Insert # 2

The expanded enforcement report was presented to the State in annual summary report issued in September 2008 showing the enforcement report.

Cal/EPA Response: *Cal/EPA looks forward to tracking the CUPAs ongoing progress to comply with this corrective action. Cal/EPA will review the CUPAs annual summary report submittals for FY' 2008/2009 to verify the deficiency has been adequately addressed.*

3. **Deficiency:** The CUPA has not performed an annual California Accidental Release Prevention (CalARP) self-audit in compliance with California Code of Regulations title 19.

Corrective Action: By February 3, 2009, the CUPA shall perform an annual CalARP performance audit that fulfills the regulatory requirements and submit a copy to Cal/EPA.

CUPA Update 1: The CUPA was unaware of the new CalARP self audit requirement and the self audit is being prepared and should be completed by June 30, 2009.

Cal EMA Response: Cal EMA feels that the time line is acceptable and looks forward to seeing the CUPA's annual CalARP Performance audit in their next progress report.

4. **Deficiency:** The CUPA has not maintained the state mandated inspection frequency for its CalARP facilities within the last three fiscal years.

Corrective Action: By February 3, 2009, the CUPA will develop and submit an action plan which will outline how the CUPA expects to reach the state mandated inspection frequency for the CalARP facilities.

CUPA Update 1: The CalARP audit/inspection schedule is as follows.

February 23 to February 27th to audit and inspect the Blossom Hill Winery Risk Management Plans for Ammonia and Sulfur Dioxide.

March 16 to March 20th to audit and inspect TriCal Risk management Plans for Methyl Bromide.

April 13 to April 17th to audit and inspect Earthbound Farms Risk management Plan for Ammonia.

The Risk Management Plan required from Tru-Leaf for ammonia has not been submitted but is under court order to submit the plan. It will be scheduled when the court order is submitted to this office and a time frame to submit the plan is established.

Cal EMA Response: The dates submitted in this progress report seem to be in line with correcting this deficiency. In the CUPA's next progress report, please include if these CalARP facilities have indeed been inspected, at which time this deficiency will be considered corrected

5. **Deficiency:** The monitoring requirements are incomplete on the underground storage tank (UST) operating permit.

Corrective Action: By May 4, 2009, the CUPA will verify that all issued operating permits are complete.

On the first progress report, please submit a revised operating permit.

The CUPA may either completely fill out the monitoring requirements already listed on the current permit or as a condition of the permit, attach a completed and approved monitoring plan (Unified Program Consolidated Form [UPCF] UST-D) to the permit.

CUPA Update 1: The California Health and Safety Code 25284 states “no person may own or operate an underground storage tank or facility unless a permit for its operation has been issued by the local agency. The CUPA issued a standard hazardous materials permit to underground tank facilities that incorporated the Unified Program approach that was used from 1998 until the 2006 evaluation.

In the 2006 evaluation the CUPA was instructed that each permit must include all of the monitoring plan information for each underground tank. The new permit, two to three pages long was required to list all of the monitoring information.

This proved to be too complicated for clerical to fill out and was too big to be posted in a conspicuous place within the facility. This 2006 requirement is really of no value to anyone and it does not meet the spirit of the program in that it does not allow for a consolidated unified permit format.

The CUPA has decided to return to the consolidated permit format that is inclusive for all of the hazardous materials programs under the CUPA umbrella.

New monitoring plan forms have been sent out to each underground tank facility for updating. These forms are completed by the facility and returned to the CUPA. The monitoring plans are therefore maintained onsite at the facility and on file by the CUPA and in addition monitoring plans are inspected annually at each facility. Although it is wasteful and unnecessary, the monitoring plans will be included in the annual permit unless the State would reconsider this deficiency and allow the monitoring plans to be maintained on file both at the facility and at the Health Department.

Insert # 3

Copy of 2009-2010 Underground Tank Facility Permit with a copy of the updated monitoring plan.

SWRCB Response: *The CUPA is making good progress towards correcting this deficiency. On the next progress report, please submit a revised copy of your UST operating. Attached to this response, is an example of a UST operating permit. On the backside, under section h (9), the CUPA will find an easy fix to not having to attach the approved UPCF-D. If the CUPA would like, the SWRCB will contact the supplied permit maker and get a word version so that cutting and pasting can be done. The SWRCB also agrees that having all required paperwork onsite and in facility file is recommended, so that paper is not wasted every year when printing out new permits. One suggestion, § 2712 states (h) The local agency shall provide the permittee with a written list of all applicable requirements of Chapter 6.7 and 6.75 of the Health and Safety Code and these regulations. An easy way to do this would be copy and paste the whole section h from the supplied permit. At a minimum, add chapter 6.75 to the already mentioned chapter 6.7. If there are any questions, please contact Sean Farrow to get deficiency corrected.*

6. **Deficiency:** The CUPA did not inspect its one tiered permitting (TP) facility within its triennial inspection cycle.

Corrective Action: The CUPA will ensure that all TP facilities are inspected by June 30, 2009. The CUPA will indicate when the goal has been achieved in the next FY 08/09 Annual Inspection Summary Report 3.

CUPA Update 1: The tiered facility was inspected on December 8, 2008.

DTSC Response: *DTSC appreciates the CUPAs efforts to complete all TP inspections. No further updates are required. Thank you.*

7. **Deficiency:** The CUPA is unable to document in certain instances that some facilities that have received a notice to comply for minor violations have returned to compliance (RTC) within an established timeframe.

Corrective Action: The CUPA will follow its I&E Program Plan. By June 30, 2009, please send an example of an RTC or a complete follow-up report for a hazardous waste generator.

CUPA Update 1: A return to compliance (RTC) form is sent out to all facilities following an inspection. These RTC's list all of the violations noted and require the facility to return the form showing abatement of the violations within a certain time frame. The CUPA was not following up on the facilities that were not meeting the stated time frame for their return to compliance.

The CUPA is reviewing each incoming 2009 annual declaration for compliance with previous inspections that indicated violations. Companies have been required to resubmit their annual declaration by addressing those compliance issues noted in the inspection report.

Insert # 4 - A copy of one of these enforcement letters.

DTSC Response: *DTSC appreciates the CUPAs efforts in following up on outstanding RTCs. No further updates are required.*

8. **Deficiency:** The CUPA did not implement its graduated series of enforcement.

Corrective Action: The CUPA will follow its I&E Program Plan. For cases referred to the DA or the State Circuit Prosecutor and which will not be pursued by either office, the CUPA will follow its graduated series of enforcement, which includes the issuance of administrative enforcement orders.

By February 3, 2009, the CUPA will attend enforcement training, such as the CUPA conference.

CUPA Update 1: As time permits, and a great deal of time is necessary, enforcement through the circuit prosecutor has resulted in two companies being forced into compliance by court order. More cases are being prepared as time permits.

Insert # 5 - Maggiora Bros Stipulated Agreement

As a parting shot:

An infusion of \$ 60,000.00 to the yeoman rural county CUPA's trying hard to comply with State oversight would be nice. The State has so generously awarded an annual amount of \$ 60,000.00 to those rural CUPA's who cried, whined, resisted and rebuffed the State for years and still refused to comply with the State mandate to implement a CUPA program in their county. In at least one case, I know, they continue to argue points of no consequence with the State acting superior and ignorant. These squeaky wheels get the grease every year while the rest of us well meaning, give it your all CUPA's find ourselves frequently stuck behind the eight ball.

DTSC Response: *The CUPA is taking the necessary formal enforcements, no further updates are required. Thank you.*